

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6518

PETITION OF CHRISTOPHER LEMOS

OPINION OF THE BOARD

**(Opinion Adopted April 12, 2017)
(Effective Date of Opinion: May 8, 2017)**

Case No. A-6518 is an application for two variances needed to allow construction of a proposed two-story addition. The proposed structure requires a variance of nine (9) feet as it is within sixteen (16) feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.8.B.2 of the Montgomery County Zoning Ordinance. The proposed addition also requires a variance of five (5) percent from the thirty (30) percent lot coverage maximum set forth in Section 59-4.4.8.B.1 of the Zoning Ordinance, as the proposed construction would result in thirty-five (35) percent lot coverage.

The Board held a hearing on the application on April 12, 2017. Petitioner Christopher Lemos and his wife appeared at the hearing with their architect, J. Jennifer Xu.

Decision of the Board: Variances GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 49, Block 24, Glen Echo Heights Subdivision, located at 3 Wyoming Court, Bethesda, Maryland, 20816, in the R-90 Zone. Per SDAT, the Petitioner has owned this property since 2013.
2. In 1989, when this property was still zoned R-60, a prior owner was granted two variances needed to construct a two-story addition: a variance of 5.5 feet from the required side lot line setback of seven (7) feet, and a variance of ten (10) feet from the required rear lot line setback of twenty (20) feet. In addition to the variances needed for the construction, a variance of .44 foot from the required front lot line setback of twenty-two (22) feet was also granted for the existing dwelling. See BOA Case No. A-2706.

3. The Petitioner's Justification Statement describes the property as "a pie-shaped lot off of a cul-de-sac, with a large portion of the lot being towards the rear." The Statement notes that the "property is also cut off in the north east corner by an angled property line" which "makes the proposed addition extend into the zoning required setback by 3 feet." The Justification Statement further notes that the "lot size is only 6,175 square feet, which is smaller than most of the neighboring lots," and that "[w]ith a small lot size, allowable building square footage is small." The site plan confirms this description, and further indicates that none of the five lot lines that comprise the perimeter of this property are parallel to each other. See Exhibits 3 and 4(b).

4. In discussing the impact of the proposed addition on the neighbors, the Petitioner's Justification Statement states that "[t]he proposed addition will not affect the appearance of the front of the house. It will not block any views of the neighbors. There are still sizable distances between neighbor houses. No trees will be cut because of the proposed addition." See Exhibit 3.

5. The Board mailed Notice of the April 12, 2017, hearing on March 10, 2017. See Exhibit 8(a) and (b). On April 5, 2017, and April 6, 2017, the Board received letters of concern from two abutting neighbors to the rear, both indicating that they would like to participate in the hearing, and both asking that the hearing be continued because the scheduled date fell during spring break for the County's public schools. See Exhibits 9 and 10. In addition, the Board received a letter from the Petitioner and his wife requesting that the hearing be held as scheduled for a variety of reasons, including (but not limited to) the fact that the Petitioner had promptly posted the required sign and thus the neighbors had had adequate opportunity to voice their concern over the date, and the fact that the Petitioner travels weekly throughout North America and has to plan his schedule months in advance. See Exhibit 11.

At the hearing, the Petitioner testified that after being alerted that his neighbors had concerns, he had spoken to both of these neighbors, and had placed a visual marker in his yard to help the neighbors visualize where the addition would be. He testified that the conversation with one of the neighbors had gone extremely well (the authors of the letter at Exhibit 10), and that they no longer had concerns about the project. See Exhibit 13. When asked by the Board how the conversation with other neighbors had gone (the authors of the letter at Exhibit 9), he testified that they had questions about the design, and whether it would impede the view from their house or their light. He testified that he had spoken with his architect about this, and that she said the proposed addition would do neither. On a motion by Edwin S. Rosado, seconded by John H. Pentecost, Vice Chair, the Board voted to deny the continuance request and hold the hearing as scheduled.

6. At the hearing, the Petitioner testified that he and his wife purchased the subject property in August of 2013. He testified that their lot is small, pie-shaped, and irregular.

He testified that their home is the only "original" home of 11 houses on their cul-de-sac, explaining that while his home did have a non-original addition, the other homes on their court had all been replaced with newer homes.

The Petitioner testified that the irregular size and shape of his property had resulted in his existing house having an irregular and challenging size and shape. He testified that the proposed addition is intended to improve the flow of the home, and to allow for the construction of a second floor master bath.

CONCLUSIONS OF LAW

As a preliminary matter, the Board notes that when it issued its earlier variance Opinion for this property, the property was zoned R-60, and thus the Board finds that at some point subsequent to the issuance of its previous Opinion, the subject property was apparently downzoned from R-60 to R-90. See BOA Case No. A-2706. The Board is aware that such downzoning took place in this area of the County, and questions whether as a result, Section 59-7.7.1.D.5.d of the Zoning Ordinance might apply to this property. Section 59-7.7.1.D.5.d states that "In addition to the authority to renovate, repair and reconstruct under Section 7.7.1.A.1 and without regard to the standards of its current zoning, the owner of a detached house that ... is in an area rezoned from R-60 to R-90 may construct an addition that satisfies the development standards of the R-60 zone under the standard method of development." Had the Petitioner's proposed construction been measured against the R-60 development standards instead of the R-90 development standards, the Board believes that the extent of the necessary rear lot line variance would have been reduced, and the need for the lot coverage variance would likely have been eliminated. That said, the Board is not the arbiter of the variances needed, and does not need to reach these questions. The Board has advertised the variances necessary for the proposed construction based on the building permit denial issued by DPS, and will act accordingly.

Based on the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property is unique in that it has an exceptional shape and small size (6,175 square feet in a zone with a 9,000 square foot minimum), which combine to significantly constrain the buildable area on this property. The Board finds that this constitutes an extraordinary condition that is peculiar to this property. See Exhibit 4(b).

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Based on the testimony of the Petitioner, as confirmed by the SDAT printout, the Board finds that the Petitioner purchased this property in 2013, and is not responsible for the size or shape of this lot.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board notes that at 6,175 square feet, this property is barely larger than the 6,000 square foot minimum for the R-60 zone, and significantly substandard for the R-90 zone in which it is currently located, which has a minimum lot size of 9,000 square feet. The Board further notes that as it found above, the small size of this property, coupled with its irregular shape, results in the lot having a constrained buildable area. Thus the Board finds that the lot coverage variance sought by the Petitioner, which would not even have been needed had their property still been zoned R-60, is the minimum necessary to overcome the impediment that the Zoning Ordinance would otherwise pose to the development of this small and irregular lot. The Board further finds that the variance to the rear setback is the minimum needed to overcome the practical difficulty imposed by the development standards of the Zoning Ordinance in light of the unusual shape and small size of this property.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to construct this addition is consistent with the residential uses contemplated by the Bethesda Chevy Chase Master Plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*


The Board finds that the proposed addition will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding with respect to the confronting property owners, the Board notes that the Justification Statement states that the proposed addition will not "affect the appearance of the front of the house." With respect to abutting owners, the Board notes that it received nothing from the Petitioner's abutting neighbors on Wyoming Court to indicate that the proposed construction would negatively affect their use and enjoyment of their property. The Board did receive letters from two abutting property owners to the rear. One of those property owners withdrew his concerns about the proposed construction after talking with the Petitioner. See Exhibit 13. Per the Petitioner, after talking with the remaining concerned neighbor, he shared that neighbor's concerns, which pertained to view and light, with his architect, and she indicated that she did not believe the proposed addition would pose such problems for that neighbor.

Accordingly, the requested variances from the lot coverage limitation and the rear lot line setback are **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Carolyn J. Shawaker, Chair, with Stanley B. Boyd, Edwin S. Rosado, and Bruce Goldensohn in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of May, 2017.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.